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> Federal Communications Commission
> Office of the Secretary
> Washington, DC 20554
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> Re: Rules and Regulations Implementing the Telephone
> Consumer Protection Act of 1991-Comment
> FCC Docket Nos. CG 02-278 and CC 92-90
>
> Ladies and Gentlemen:
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> Wells Fargo & Company ("Wells Fargo") welcomes the
> opportunity to comment on the notice of proposed rulemaking by the Federal
> Communications Commission (the "Commission" or "FCC") to amend the Rules
> and Regulations Implementing the Telephone Consumer Protection Act of 1991
> ("TCPA"). Wells Fargo is a diversified financial holding company with
> over 30 subsidiary banks and over 100 additional subsidiaries that provide
> financial products and services to consumers. Many of our subsidiaries use
> telemarketing to inform customers and potential customers of products and
> services that may be of value to them and are thus directly affected by
> restrictions on telemarketing. Our comments are confined to the
> Commission's inquiry into whether it should establish a national
> do-not-call ("DNC") list either by itself or in cooperation with the
> Federal Trade Commission (the "FTC").
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> We believe a single, nationwide "do not call" list and a single set
> of associated rules would bring tremendous value to both businesses and
> consumers as long as the principles described below are observed.
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> 1. Any Federal "Do Not Call" List Should Preempt State
> Law.
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> More than half the states have already enacted legislation
> establishing "do not call" lists which purport to apply to interstate
> calls to residents of those states, as well as purely intrastate calls.
> (As to interstate calls, such laws are arguably preempted by the
> Communications Act of 1934 and/or the TCPA). Many businesses attempt to
> comply with such laws, even as to interstate calls. However, the
> multiplicity of state lists and the variations in the details of these
> state laws constitute a significant and growing expense and compliance
> risk for businesses operating in multiple states. In addition, the variety
> of state laws, overlaid by company-specific do not call lists, leads to a
> great deal of consumer confusion and frustration.
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> One of our objections to the FTC proposal was that it is, at best,
> uncertain whether the FTC can preempt state law through the exercise of
> its rulemaking authority. We believe it is clear that the Commission can
> preempt state do not call laws by exercising its authority under TCPA, and
> we strongly believe it should do so. We also believe that any "do not
> call" law or regulation should apply to solicitation calls regardless of
> the business of the caller or whether the call is placed by an employee of
> the seller or an independent contractor. Accordingly, action by this
> Commission is required to extend any federal "do not call" requirement to
> types of businesses that are not subject to the jurisdiction of the FTC.
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> 2. Business Must be Permitted to Call Their Existing
> Customers
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> There are many reasons to exempt calls to customers with
> whom the caller has an established relationship from the requirements of
> any general "do not call" list. All but one of the existing state "do not
> call" laws recognize such an exception. This is not because businesses
> ought to ignore their customers' desires regarding telemarketing; the
> point is that there are many situations in which there is no clear line
> between "customer service" and "sales." A few examples:
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> A. A securities broker calls a client to
> recommend selling a security in the client's current portfolio. Indeed,
> under some circumstances, the broker may have a legal obligation to make
> such a call. But, because the broker will get a commission from the sale,
> even that could be construed as a "sales" call. And, in many cases, the
> client will ask, "What should I do with the proceeds? " Any
> recommendations the broker makes would clearly be within a broad
> definition of "sales" or "solicitation. "
>
> B. An auto lease is expiring. The lessor calls
> to determine whether the lessee intends to make a payoff or return the
> vehicle. If the customer doesn't want to return the vehicle, the call is
> likely to flow into a discussion of loan or lease extension/renewal
> options.
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> C. During a period when interest rates are
> falling, a mortgage lender may be willing to allow existing borrowers to
> refinance at lower rates at a very low (or no) fee.
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> D. In a collection or workout situation, the
> lender may be willing to offer an extension, renewal or new loan to
> someone who is delinquent. Does making such an offer turn the collection
> call into a sales call?
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> Without an "established relationship" exception to "do not
> call" list provisions, legitimate customer service calls will be inhibited
> and the customers may not be informed of available options that could be
> of significant value to them. Unlike calls to non-customers, in dealing
> with existing customers businesses have substantial motivation to treat
> them respectfully since they can take their business elsewhere.
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> We also believe that the established relationship exception should
> extend to corporate affiliates doing business under the same "brand name"
> unless the customer specifically asks that organization not to make
> telemarketing calls. Many businesses, especially financial institutions,
> carry on different aspects of their business through different
> subsidiaries for regulatory or tax reasons. In such cases consumers are
> usually unaware of technical distinctions between legal entities and,
> indeed, might consider it poor customer service if they were not informed
> of discounts or other special terms offered by one affiliate to customers
> of another. California's recently (2001) enacted "do not call" law extends
> the "established relationship" exception to affiliates using the same
> brand name, and we believe this is a sensible approach in light of the way
> many businesses are organized and customer expectations.
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> 3. There Must be a Feasible Method to Check the Status
> of Single Numbers
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> While most telemarketing calls are made as part of large,
> organized campaigns, many such calls are made on a one-off basis. Unless
> some means is provided for callers to economically check the status of a
> single number, consumers will continue to receive unwanted calls and
> businesses will be exposed to liability when there is no reasonable means
> to ensure compliance. In Indiana, for example, the state Attorney General
> maintains a web site where someone can, without charge, check numbers one
> at a time to see if they are on the "do not call" list. This permits
> compliance by sellers making isolated calls. However, because this process
> is time-intensive, there is no danger that it will be used by anyone
> making a large number of telemarketing calls to circumvent the requirement
> to purchase the "do not call" list.
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> 4. Adequate Information Must be Provided to Investigate
> Complaints
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> One of the ongoing problems for businesses in complying with
> state "do not call" laws is that the information provided in connection
> with complaints by consumers who receive calls despite being registered on
> a "do not call" list is insufficient to investigate the exact source and
> nature of the call. For example, Wells Fargo has more than 134,000
> employees in thousands of locations scattered across almost all 50 states.
> The typical consumer complaint notice states only that an unnamed person
> at a specific number (which is on the state's "do not call" list) received
> a call from Wells Fargo at a particular date and time. Without the full
> name of the caller, the name of the person to whom the call was directed,
> a call-back number and a reasonable description of the nature of the call,
> it is virtually impossible for us to determine whether the call was
> actually a violation of the "do not call" law-so that we can take
> corrective action to prevent similar calls in the future-or if it was made
> for a permitted purpose or, perhaps, was simply a misdialed number.
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> 5. Listings Should Expire Automatically.
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> "Do not call" listings should expire automatically after a
> reasonable period-say, three years-if not renewed by the subscriber.
> American families move, on average, about every five years, and most moves
> involve a change of phone numbers. In addition, frequent area code changes
> have become a fact of life. Experience with state "do not call" lists
> shows that, unless they are purged regularly, many numbers remain on those
> lists long after they are assigned to another consumer. The burden on
> consumers of renewing their listings periodically is minimal.
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> 6. "Do Not Call" Lists Should be Updated No More than
> Quarterly.
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> Any proposal to establish a "do not call" list should also
> establish the frequency with which the list will be updated and the "grace
> period" between the publication of a new list and when new additions to
> the list must be observed. Most state "do not call" lists are published
> quarterly, with a 30-day grace period between the effective publication
> date and the effective date. This timetable seems to work reasonably well

> for all concerned. More frequent updates or a shorter grace period will
> impose additional burdens on businesses that employ telemarketing and the
> agency maintaining the list, with little corresponding benefit to
> consumers.

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> 7. The "Do Not Call" List Provisions Should Not Apply
> to Any Inbound Calls.

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> The FTC's telemarketing proposal would have the effect of
> turning some calls initiated by the consumer into "outbound" calls for all
> purposes of the Rule. "Do not call" requirements should not apply to such
> calls. The primary argument for "do not call" lists is that telemarketing
> calls interrupt other activities, especially dinner. This intrusion
> factor simply does not apply to calls initiated by the consumer. It is
> unlikely that a consumer will initiate calls to an organization he or she
> has specifically asked not be called by. And calls initiated by a
> consumer who is on a general "do not call" list do not carry any risk of
> intrusion at an inconvenient time.

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> Conclusion

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> We believe a truly national "do not call" list, applicable
> to all interstate telemarketing calls, would benefit businesses and
> consumers alike provided it did not interfere with our ability to service
> the needs of our existing customers.

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> Please feel free to contact the undersigned at (415)
> 396-0940 or by email at "mccorkpl@wellsfargo.com" if you have any
> questions regarding the foregoing comments.

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Very truly yours,

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/s/ Peter L.

> McCorkell

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Peter L. McCorkell
Senior Counsel

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